

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(GO. Rt. No. 198/Lab./AIL/J/2012, dated 14th November 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 11 of 2008, dated 19-7-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Chemfab Alkalies Limited, Puducherry and its workman Thiru V. Rajaram over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Thursday, the 19th day of July 2012.

I.D. No. 11/2008

V. Rajaram . . . Petitioner

Versus

The Managing Director,
Chemfab Alkalies Limited
Kalapet, Puducherry. . . Respondent

This industrial dispute coming on 10-7-2012 for final hearing before me in the presence of Thiru B. Mohandass, Advocate for the petitioner, Thiru G. Krishnan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 84/AIL/Lab./J/2008, dated 19-6-2008 of the Labour Department, Pondicherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru V. Rajaram against the management of M/s. Chemfab Alkalies Limited, Puducherry over his non-employment is justified or not?

(2) If not, to what relief, Thiru V. Rajaram is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner, in his claim statement, has averred as follows:

Originally, the petitioner joined as driver in the respondent company on 1-7-1994 and he discharged his duties in a very sincere and honest manner and without any black mark.

On 28-5-2005, the General Manager of the respondent company by name Michael Raj informed the petitioner and the other drivers that they had decided to out source the work of the drivers of the company to a contractor, who would be providing vehicles and drivers with effect from 1st June 2005 and hence all the drivers should submit their resignation letters on or before 31st May 2005 and accept the compensation settlement decided by the respondent. But the said proposal of the respondent company was not accepted by the petitioner and the other drivers, since many of them had many financial commitments like discharge of housing loan, personal loan, educational expenses for their children etc. Hence, they have no other alternative than to start a trade union and accordingly, they submitted the requisite form for registration of the trade union under the name and style "Chemfab Alkalies Employees Union" to the Labour Officer, Pondicherry and intimated the same to the respondent company through FAX. But the respondent management did not care for this action of the petitioner and other drivers but proceeded with its decision to entrust the task of drivers to the contractor. As such on 1-6-2005, the petitioner and the other drivers were stopped from doing their work and the work of drivers was given to an outside contractor K.B.S. Transports. The petitioner and other drivers went on pleading with the respondent to give them back the work as earlier. But the respondent was not prepared to reconsider its decision in the matter of entrusting the work of drivers to contractor.

On 4-6-2005, when they reported for work at 8.00 a.m. they were not allowed to go inside the company and about 9.00 a.m. the petitioner and other drivers were called inside and the Personnel Manager once again threatened them stating that it was last chance for them to get the compensation indicated by the respondent. As the petitioner refused to accept the

same, the management planned to punish the drivers by transferring them to distant places like Chennai, Villivakkam etc. The transfer order in the form of punishment was nothing but act of victimisation and hence the petitioner refused to receive the said transfer order. The act of the management of transferring the drivers had a demoralising effect on the petitioner and the other drivers. They could not withstand the pressure given by the respondent to accept the *lump sum* offer for settlement of accounts or to suffer the injurious transfer to far away place. Finally unable to withstand the rigours of the managerial pressure, the petitioner and other drivers had to yield to the tunes set by the respondent and accordingly, the respondent succeeded in getting resignation letter from the petitioner by way of coercion and undue influence done through the managerial persons. Even then the respondent was not prepared to pay the *lump sum* amount as offered by the respondent, on account of fact that the petitioner and other drivers started the trade union. Under such circumstances, the termination of services of the petitioner by adopting unfair means is arbitrary, illegal and void and not binding on the petitioner. Hence, this industrial dispute is filed to reinstatement the petitioner into service with back wage and continuity of service apart from claiming a sum of ₹ 2 lakhs towards damages.

3. In the counter statement, the respondent has stated as follows:-

It is true that the petitioner was working in the respondent company as driver from 1-7-1994 to 4-6-2005. The respondent company intended to transfer the drivers for better utilisation of their services and on administrative reasons and exigencies of work. Having come to know of the transfer which is an incident of service, the drivers, who have worked at one station throughout their service career, made a representation to the then General Manager- HRD that they were totally fed up with the monotonous work which they were doing in the factory for a quite a long time and their dream was to own a vehicle and use it for commercial purpose which would fetch them more income and they could also concentrate on other works independently and further represented that their dreams would come true only with help of the management by paying them a *lump sum* as *ex gratia* apart from terminal benefits and if the management agree for such arrangement, though would even submit their resignation.

The management keeping in view of their long association with the management, considered the representation as *bona fide* and gave clearance to Michael Raj to negotiate with the drivers to arrive at

a reasonable *ex gratia* payment without laying any precondition and accordingly, he proceeded with the negotiation. The management permitted the drivers to negotiate and finally the petitioner and other drivers have agreed for the *lump sum ex gratia* payment negotiated by the management taking into consideration of their respective period of service. In this back ground, the petitioner tendered his resignation voluntarily *vide* letter, dated 4-6-2005 and the resignation was accepted by the management and the petitioner has also received his legal dues and the *ex gratia* of ₹ 61,421 *vide* receipt of the same date and the management has also issued a service certificate to him. On account of his resignation, he has also applied for gratuity in Form-1 and received the gratuity amount. Subsequently, he has also settled his provident fund account. The petitioner having tendered resignation voluntarily and after having accepted terminal benefits and *ex gratia* payment without any protest and after having settled his provident fund account cannot now turn round and allege that the resignation was obtained by coercion and undue influence. Hence, they pray for dismissal of the petition.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent, RW.1 to RW.3 were examined and Ex.R1 to Ex.R16 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The main contention of the petitioner is that originally he joined as driver on 1-7-1994 and on 28-5-2005 the General Manager-HRD of the respondent company informed him that the respondent company had decided to outsource the work of the drivers of the company to a contractor with effect from 1st June 2005 and hence he should submit his resignation letters on or before 31st May 2005 and since he refused to give the resignation letter, he was stopped from doing work from 1-6-2005 and once again the said Personnel Manager threatened him to submit his resignation letter and since he did not accept the same, the management planned to punish him by transferring him to distant places like Chennai, Villivakkam etc., and finally unable to withstand the rigours of the managerial pressure, he submitted his resignation letter to them, but the respondent was not prepared to pay the *lump sum* amount as originally offered by them.

7. In order to prove his claim, the petitioner examined himself as PW.1, who deposed about the said facts and marked Ex.P1 to Ex.P11. Ex.P1 is the resignation letter submitted by the petitioner to the respondent. Ex.P2 is

the letter submitted by the petitioner to the respondent regarding settlement of accounts. Ex.P3 is the representation submitted by the petitioner to the Labour Officer. Ex.P4 is the reply submitted by the respondent to the Labour Officer. Ex.P5 is the letter, dated 10-6-2005 sent by Alwin Maria Susai to the respondent. Ex.P6 is the pamphlet showing the inaugural function of the trade union. Ex.P7 is the pay slip of the petitioner for the month of January 2005. The learned counsel for the petitioner relied upon the following decisions to support his claim:-

CDJ 2000 SC 199:

"The appellant was a casual labour who had attained the temporary status after having put in ten years of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meager amount of ₹ 6,350 was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental rights under the constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of fundamental rights available under the constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his Constitutional rights. Such an order cannot be sustained."

CDJ 2003 SC 820:-

"Medical Ethics - Hospital Service Rules - Rule 10(1) -Negligence - Appellant anaesthetist left without informing when requested to give anaesthesia to one patient admitted in emergency - No explanation submitted by her - Placed under suspension - Appellant replied to Secretary to Hospital that she was sick and very tired and if it is not acceptable she has no option left but to render her resignation with immediate effect - Resignation accepted - High Court declined to interfere dismissed writ petition - Appeal - Whether the letter, dated 9-1-1999 could be construed to mean or amounted to a letter of resignation or merely an expression of her intention to resign, if her claims in respect of the alleged lapse are not viewed favourably - Held the letter cannot be construed to convey and spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a 'resignation' it must be unconditional and with an intention to operate as such. At best, as observed by this court in the decision in P.K. Ramachandra Iyer (*supra*) it may amount to a threatened offer more on account of

exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple - Order of High Court set aside - Appeals allowed with liberty to respondent hospital to pursue the disciplinary proceedings initiated against her in accordance with law.

8. *Per contra*, the contention of the respondent is that the respondent company intended to transfer the drivers including the petitioner, for better utilisation of their services and on administrative reasons and exigencies of work and having come to know of the transfer which is an incident of service, the petitioner along with other drivers, who have worked at one station throughout their service career, made a representation to the then General Manager-HRD that they were totally fed up with the monotonous work which they were doing in the factory for quite a long time and their dream was to own a vehicle and use it for commercial purpose which would fetch them more income and the management keeping in view of their long association with the management, considered the representation as *bona fide* and gave clearance to Michael Raj to negotiate with the drivers to arrive at a reasonable *ex gratia* payment without laying any precondition and accordingly he proceeded with the negotiation and after negotiation, the petitioner and other drivers have agreed for the *lump sum ex gratia* payment negotiated by the management taking into consideration of their respective period of service and the petitioner tendered his resignation voluntarily *vide* letter, dated 4-6-2005 and the resignation was accepted by the management and the petitioner has also received his legal dues and the *ex gratia* of ₹ 61,421 *vide* receipt of the same date and the management has also issued a service certificate to him and on account of his resignation, he has also applied for gratuity in Form-1 and received the gratuity amount and subsequently, he has also settled for gratuity in Form-1 and received the gratuity amount and subsequently, he has also settled his provident fund account and the petitioner having tendered resignation voluntarily and after having accepted terminal benefits and *ex gratia* payment without any protest and after having settled his provident fund account cannot now turn round and allege that the resignation was obtained by coercion and undue influence.

9. In order to prove his defence, the General Manager-HR of the respondent company was examined as RW.1 RW.1 in his evidence has deposed about the said facts and marked Ex.R1 to Ex.R16.

10. Heard both sides. Perused the case records. It is admitted by both parties that the petitioner was working as driver from 1-7-1994 to 4-6-2005 in the

respondent company. It is also admitted by both parties that the petitioner has tendered his resignation to the respondent company. But the learned counsel for the petitioner has submitted that relieving the petitioner from service was due to coercion and he was threatened, forced in doing so and it was contrary to law. In the proof affidavit, the petitioner as PW.1 has stated that on 4-6-2005 when he reported for work at 8.00 a.m. he was not allowed to go inside the company and at about 9.00 a.m. he and other drivers were called inside and R. Sundararajan, Personnel Manager threatened them stating that it was the last chance for them to get the compensation indicated by the respondent and since he refused to accept the same, the management planned to punish them by transferring them to distance places like Chennai and he was transferred to Head Office, Vandalur, Chennai and the management's act of transferring the drivers had a demoralising effect on the petitioner and the other drivers and he unable to withstand the rigours of the managerial pressure, the petitioner and other drivers had to yield to the tunes set by the respondent and accordingly, the respondent succeeded in getting the resignation letter from him by way of coercion and undue influence done through the managerial persons like R. Michael Raj (GM HRD), R. Sundarrajan (PM), V.R. Raghuraman (PM) and Suresh K.M. Rao etc., PW.1 further deposed that the respondent management was not prepared to pay the *lump sum* amount as originally offered by them on account of the fact that he and other drivers started the trade union and it would affect the interest of the management in future by way of other employees joining the trade union and as the resignation letter submitted by him was not voluntary one but obtained by the respondent under coercion and undue influence, it was not legally valid and binding on him.

11. In order to prove that the resignation letter was obtained by coercion, the petitioner has examined one Sundararajan as PW.2. PW.2 in his evidence has deposed that he knows the petitioner and after getting resignation letter from the petitioner, he was terminated by the respondent company and as directed by his superior officer by name Michael Raj, the resignation letters were obtained from the petitioner and other drivers, since they were prepared to start a trade union. PW.2 further deposed that the petitioner himself wrote the resignation letter, as dictated by the respondent company. PW.2 further deposed that since the petitioner has not compromised with the management of the respondent and participated in starting the trade union, he has forced to give the resignation letter. During the cross-examination, PW.2 has admitted that on 31-3-2010 he was forced to resign the job from the respondent company and the respondent company has not given retirement benefit amount as promised by them.

12. The learned counsel for the respondent has submitted that the petitioner was not the 'workman' within the meaning of 2(s) of Industrial Disputes Act and having given a voluntarily resignation, no dispute can be raised under section 2-A of the Industrial Disputes Act and the said provision is available only in the case of termination by the management and not in case of voluntary resignation by the petitioner. The learned counsel for the respondent further submitted that when the petitioner has voluntarily tendered his resignation and accepted the same by the management and all the benefits arising out of such resignation has been paid by the management and received by the petitioner, he cannot be treated as a 'workman' coming under section 2(s) of Industrial Disputes Act. In order to support his claim, he relied upon the following decisions:-

(1999) II LLJ 851 Ker:

"The appellant, having voluntarily tendered his resignation pursuant to a scheme for voluntary retirement, the resignation having been accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the appellant, he cannot be treated as a 'workman' coming under section 2(s) of Industrial Disputes Act. As already noticed, the definition only includes persons who are presently employed, or who have been dismissed, discharged or retrenched from the service of the employer".

(2001) II LLJ 52 Ker:

"The absence of the terms 'resignation' and retirement in the aforesaid definition, according to me, is very conspicuous. When a person claims the status of a 'workman' under the deeming provisions, he has to establish that he comes within the four corners of the definition provided therefor under the statute".

Writ Petition No.1488 of 2001:

"The resignation by the petitioner brings about complete cessation of master and servant relationship between the third respondent and the petitioner. Hence, the petitioner cannot at all be termed as "workman" within the meaning of section 2(s) of the Act".

2011 LLR 486:

"In view of the above finding that the workmen are not workmen within the meaning of 2(2) of the Industrial Disputes Act and the case of the workmen that it was a fraud resignation was not believed, they are not eligible to move the Labour Court under section 2-A of the Industrial Disputes Act".

AIR 1990 SC 1808:-

“The meaning of term ‘resign’ as found in the Shorter Oxford Dictionary includes ‘retirement’. Therefore, when an employee voluntarily tenders his resignation, it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression ‘voluntary retirement’ within the meaning of clause (I) of section 2(s) of State Act”.

2008 LLR 86:-

“Resignation by an Employee - Withdrawal of - After valid acceptance not permissible - Petitioner tendered her resignation on 20-3-2006 to be effective from 1-4-2006 - Her account was settled and a cheque for ₹ 7,05,092 was given in full and final - In the last week of June 2006, the company introduced a severance package for employees who will be resigning - Petitioner sent a letter, dated 18-8-2006 stating that she has tendered the resignation under threat and coercion -Is devoid of justification - Resignation was voluntary and not under coercion”.

13. On the side of the respondent, the resignation letter given by the petitioner was marked as Ex.R1. In Ex.R1, the petitioner has stated that on his own request, he tendered his resignation and hence he requested the respondent management to give the gratuity, *ex gratia*, provident fund and other benefits. Based on Ex.R1, the petitioner was relieved from service by the respondent management. Ex.R1 has not been challenged by the petitioner. In fact, the petitioner himself has admitted in his cross-examination that he only wrote Ex.R1 and gave it to the respondent management. The relevant portion of his evidence runs as follows:-

“எக்சிபிட் பி 1 ராஜினாமா கடிதம் எனது கைப்பட எழுதி தரப்பட்டது என்றால் சரிதான். அந்த ராஜினாமா கடிதத்தை ஏற்றுக் கொண்டு பணியிலிருந்து விடுவித்துள்ளது”.

Ex.R2 is the letter, dated 4-6-2005 sent by the respondent management to the petitioner. A perusal of Ex.R2 reveals that the respondent management has accepted the resignation tendered by the petitioner. Ex.R3 is the receipt issued by the petitioner in favour of the respondent company, which would prove that the petitioner has received a sum of ₹ 81,533 towards full and final settlement by way of two cheques on 4-6-2005. Ex.R5 is the application for gratuity, dated 4-6-2005 which has been given by the petitioner to the respondent company. The said documents clearly prove that based upon the resignation letter given by the petitioner, he was relieved from service by the respondent company and subsequently he received a sum of ₹ 81,533 towards full and final settlement.

14. The learned counsel for the petitioner has submitted that the resignation letter has been obtained by the respondent company from the petitioner by force and coercion and PW.2 has clearly spoken about the said fact and hence the termination of the services of the petitioner by adopting unfair means is arbitrary, illegal and void and not binding on the petitioner.

15. It is true that PW.2, who is an ex-employee of the respondent company, has stated that the resignation letter has been obtained from the petitioner by force as directed by his superior officer. According to PW.2, he along with one Rajaraman went to the house of Lourdasamy, Panneerselvam and Sivakumar for compromise to get the resignation letter from them. The said Rajaraman was examined on the side of the respondent as RW.3. RW.3 in his evidence has deposed that he was working as Assistant Manager in the respondent company from 1997 and he did not involve in the labour matters and with regard to the resignation of drivers, he did not meet any person and get the letter from them. This part of evidence of RW.3 is contrary to the statement of PW.2. Further one Raguraman, General Manager of the respondent company was examined as RW.2. RW.2 in his evidence has deposed that the petitioner and the other drivers have voluntarily tendered their resignation and they were not forced to get the same in any manner. RW.2 in his evidence has further deposed that one Sundararajan (PW.2) was working as an officer in the respondent company and now he is not in service and at no point of time, he along with one Michael Raj made a talk with the drivers. Of course RW.2 and RW.3 are the employees in the respondent company and they might have deposed in favour of the respondent company. But at the same time, the evidence of PW.2 can be looked into. PW.2 in his cross-examination, has stated that he joined as Assistant in the respondent company during the year 1985 and then he was promoted to Administrative Officer, Special Officer, Senior Special Officer and Assistant Manager and then on 31-3-2010 he was forced to resign from the job and he did not come forward to give the resignation letter voluntarily and the management did not pay the amount (நல்லெண்ணத் தொகை) as promised by them and he sent the e-mail letter under Ex.R15 to the respondent company, requesting for financial help and one Murali, who was the Assistant Manager has sent a reply under Ex.R16.

16. This part of evidence of PW.2 would clearly show that due to misunderstanding between PW.2 and the respondent company, he was relieved from service by the respondent company. Under these circumstances, there is every possibility for PW.2 to depose falsehood as against the respondent company. Apart from the above, the petitioner has stated that the respondent was not prepared to pay the *lump sum* amount as originally

offered by the respondent. Admittedly, the petitioner was paid a sum of ₹ 81,533 towards full and final settlement on 4-6-2005 under Ex.R3. But the petitioner has raised a dispute only on 23-11-2006 after 1½ years from the date of receipt of the said amount. If there is any variation in getting the terminal benefits, it is for the petitioner to approach before the respondent company immediately on receipt of the said amount. But there is no document produced on the side of the petitioner to show that he approached the respondent company for not granting the terminal benefits, as promised by the respondent company. Further there is no plausible explanation on the side of the petitioner for delay in raising the present dispute. In the above circumstances, the case of the petitioner that it was a fraud resignation cannot be believed.

17. It is pertinent to refer the following decisions, which are relevant to this case:-

2003(1) LL.N. 84:

Laffans India Private Limited Vs. Pancham Singh Aowat and Another:-

“Industrial Disputes Act, 1947 section 10(1)(c) - Complaint of forced resignation - Tenability - Labour Court awarded compensation *in lieu of* reinstatement on ground that employer had resorted to short-cut of taking resignation and thus avoided payment of retrenchment compensation - Dispute raised after a period of 15 months - Held delay of 15 months was a crucial factor to discard totally the theory that the workman was forced to resign as no workman who was forced to resign would keep quiet for such a long period - Held, award of Labour Court was perverse and totally baseless”.

2005(2) L.L.N. 360:-

K. Haridas L. Shenoy and Johnson and Johnson Limited and Others:-

“Resignation - Case of workman is that it was obtained under coercion - If could be believed - Held, workman not making immediate protest that his resignation was obtained by force - Protest made after 20 days from date of resignation - Concurrent finding of fact that there was no coercion - No interference with the concurrence findings of courts below”.

18. The petitioner has further stated that since he refused to give the resignation letter, as demanded by the respondent management, the respondent management planned to punish the petitioner by transferring him to distant places like Chennai.

19. PW.1 in his cross-examination has admitted that the transfer of employees in the respondent company is routine one and the respondent company has

informed anything about his transfer to other place and from 1994 onwards he was working in the same place. The relevant portion of his evidence runs as follows:-

“பணி இடமாற்றம் என்பது எங்கள் பணியில் ஒரு சாதாரண நிகழ்வு என்றால் சரிதான். பணி இடமாற்றம் செய்யப் போவதாக நிர்வாகம் எதுவும் சொல்லவில்லை. 1994-ல் இருந்து பணியில் சேர்ந்தது முதல் ஒரே பகுதியில் தான் பணிபுரிந்தேன்”.

Though the petitioner has stated that the respondent company has planned to transfer him to distant place, during the cross-examination, he has stated that he was not informed anything about his transfer. Further transfer of employees from one place to another place is the discretion of the management and no one can interfere with this. Hence, the contention of the petitioner that by threatening him to transfer to distant place, the respondent management got his resignation letter, cannot be taken into consideration.

20. For the foregoing reasons, this court has come to the conclusion that the petitioner has tendered his resignation voluntarily and based on which, he was relieved from service and consequently the terminal benefits were given to him, which were accepted by him without any objection and hence the petitioner is not workman within the meaning of section 2(s) of Industrial Disputes Act and he is not entitled to get the reinstatement with back wages and other benefits. Accordingly, this point is answered.

21. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 19th day of July 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

PW.1 — 17-3-2011 V. Rajaram
PW.2 — 25-6-2012 Sundararajan

List of witnesses examined for the respondent:

RW.1 — 19-9-2011 Daniel Rajanayagam
RW.2 — 27-3-2012 V.R. Raguraman
RW.3 — 10-4-2012 Rajaram

List of exhibits marked for the petitioner:

Ex.P1 — Resignation letter, dated 4-6-2005 sent by the petitioner to the respondent.
Ex.P2 — Letter, dated 4-6-2005 sent by the petitioner to the respondent regarding settlement of accounts.

- Ex.P3 — Representation, dated 23-11-2006 submitted by the petitioner to the Labour Officer.
- Ex.P4 — Reply, dated 11-12-2006 submitted by the respondent to Labour Officer.
- Ex.P5 — Letter, dated 10-6-2005 by Alwin Maria Susai to the respondent.
- Ex.P6 — Pamphlet showing inaugural function of trade union.
- Ex.P7 — Pay slip of the petitioner for the month of January 2005.

List of exhibits marked for the respondent:

- Ex.R1 — Resignation letter submitted by the petitioner, dated 4-6-2005.
- Ex.R2 — Letter, dated 4-6-2005 issued by the respondent relieving the petitioner.
- Ex.R3 — Receipt towards full and final settlement, dated 4-6-2005.
- Ex.R4 — Service Certificate of the petitioner, dated 14-6-2005.
- Ex.R5 — Application for gratuity submitted by the petitioner, dated 4-6-2005.
- Ex.R6 — Letter, dated 23-11-2006 submitted to the Labour Officer by petitioner.
- Ex.R7 — Remarks submitted by the respondent, dated 23-12-2006.
- Ex.R8 — Conciliation failure report, dated 24-4-2008
- Ex.R9 — Copy of the letter sent by the Member-Secretary to the respondent, dated 30-6-2006.
- Ex.R10 — Copy of the letter sent by Member-Secretary to the respondent, dated 11-7-2006.
- Ex.R11 — Copy of the advocate notice sent to the petitioner, dated 18-7-2006.
- Ex.R12 — Copy of the private complaint filed by the respondent against the petitioner, dated 13-9-2006.
- Ex.R13 — Copy of the plaint in O.S. No. 173/2006 on the file P.S.J., Pondicherry.
- Ex.R14 — E-mail, dated 4-2-2011 sent by the petitioner.
- Ex.R15 — E-mail, dated 5-12-2009 sent by Murali to the petitioner.
- Ex.R16 — E-mail, dated 10-2-2010 sent by Murali to the petitioner.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G. O. Rt. No. 199/Lab./AIL/J/2012,
dated 14th November 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 20 of 2008, dated 19-7-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Chemfab Alkalies Limited, Puducherry and its workman Thiru A. Lourdusamy over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Thursday, the 19th day of July 2012.

I.D. No. 20/2008

A. Lourdusamy . . . Petitioner

Versus

The Managing Director,
Chemfab Alkalies Limited
Kalapet, Puducherry. . . Respondent

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AWARD

This Industrial Dispute arises out of the reference made by the Government of Puducherry, *vide* G. O. Rt. No. 99/AIL./LAB./J/2008, dated 19-6-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru A. Lourdusamy against the management of M/s. Chemfab Alkalies Limited, Puducherry over his non-employment is justified or not?

(2) If not, to what relief Thiru Lourdusamy is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner, in his claim statement, has averred as follows:

Originally, the petitioner joined as driver in the respondent company on 16-4-1990 and he discharged his duties in a very sincere and honest manner and without any black mark.

On 28-5-2005, the General Manager of the respondent company by name Michael Raj informed the petitioner and the other drivers that they had decided to outsource the work of the drivers of the company to a contractor, who would be providing vehicles and drivers with effect from 1st June 2005 and hence all the drivers should submit their resignation letters on or before 31st May 2005 and accept the compensation settlement decided by the respondent. But the said proposal of the respondent company was not accepted by the petitioner and the other drivers, since many of them had many financial commitments like discharge of housing loan, personal loan, educational expenses for their children etc., Hence, they have no other alternative than to start a trade union and accordingly, they submitted the requisite form for registration of the trade union under the name and style "Chemfab Alkalies Employees Union" to the Labour Officer, Pondicherry and intimated the same to the respondent company through FAX. But the respondent management did not care for this action of the petitioner and other drivers but proceeded with its decision to entrust the task of drivers to the contractor. As such on 1-6-2005 the petitioner and the other drivers were stopped from doing their work and the work of drivers was given to an outside contractor K.B.S. Transports. The petitioner and other drivers went on pleading with the respondent to give them back the work as earlier. But the respondent was not prepared to reconsider its decision in the matter of entrusting the work of drivers to contractor.

On 4-6-2005 when they reported for work at 8.00 a.m. they were not allowed to go inside the company and about 9.00 a.m. the petitioner and other drivers were called inside and the Personnel Manager once again threatened them stating that it was last chance for them to get the compensation indicated by the respondent. As the petitioner refused to accept the same, the management planned to punish the drivers

by transferring them to distant places like Chennai, Villivakkam etc., The transfer order in the form of punishment was nothing but act of victimisation and hence the petitioner refused to receive the said transfer order. The act of the management of transferring the drivers had a demoralising effect on the petitioner and the other drivers. They could not withstand the pressure given by the respondent to accept the *lump sum* offer for settlement of accounts or to suffer the injurious transfer to far away place. Finally unable to withstand the rigours of the managerial pressure, the petitioner and other drivers had to yield to the tunes set by the respondent and accordingly, the respondent succeeded in getting resignation letter from the petitioner by way of coercion and undue influence done through the managerial persons. Even then the respondent was not prepared to pay the *lump sum* amount as offered by the respondent, on account of fact that the petitioner and other drivers started the trade union. Under such circumstances, the termination of services of the petitioner by adopting unfair means is arbitrary, illegal and void and not binding on the petitioner. Hence, this industrial dispute is filed to reinstatement the petitioner into service with back wage and continuity of service apart from claiming a sum of ₹ 2 lakhs towards damages.

3. In the counter statement, the respondent has stated as follows:-

It is true that the petitioner was working in the respondent company as driver from 16-4-1990 to 4-6-2005. The respondent company intended to transfer the drivers for better utilisation of their services and on administrative reasons and exigencies of work. Having come to know of the transfer which is an incident of service, the drivers, who have worked at one station throughout their service career, made a representation to the then General Manager-HRD that they were totally fed up with the monotonous work which they were doing in the factory for a quite a long time and their dream was to own a vehicle and use it for commercial purpose which would fetch them more income and they could also concentrate on other works independently and further represented that their dreams would come true only with help of the management by paying them a *lump sum* as *ex gratia* apart from terminal benefits and if the management agree for such arrangement, though would even submit their resignation.

The management keeping in view of their long association with the management, considered the representation as *bona fide* and gave clearance to Michael Raj to negotiate with the drivers to arrive

at a reasonable *ex gratia* payment without laying any precondition and accordingly, he proceeded with the negotiation. The management permitted the drivers to negotiate and finally the petitioner and other drivers have agreed for the *lump sum ex gratia* payment negotiated by the management taking into consideration of their respective period of service. In this background, the petitioner tendered his resignation voluntarily *vide* letter, dated 4-6-2005 and the resignation was accepted by the management and the petitioner has also received his legal dues and the *ex gratia* of ₹ 93,301 *vide* receipt of the same date and the management has also issued a service certificate to him. On account of his resignation, he has also applied for gratuity in Form-1 and received the gratuity amount. Subsequently, he has also settled his provident fund account. The petitioner having tendered resignation voluntarily and after having accepted terminal benefits and *ex gratia* payment without any protest and after having settled his provident fund account cannot now turn round and allege that the resignation was obtained by coercion and undue influence. Hence, they pray for dismissal of the petition.

4. On the side of the petitioner, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondent, RW1 to RW3 were examined and Ex.R1 to Ex.R16 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The main contention of the petitioner is that originally he joined as driver on 16-4-1990 and on 28-5-2005, the General Manager-HRD of the respondent company informed him that the respondent company had decided to outsource the work of the drivers of the company to a contractor with effect from 1st June 2005 and hence he should submit his resignation letters on or before 31st May 2005 and since he refused to give the resignation letter, he was stopped from doing work from 1-6-2005 and once again the said Personnel Manager threatened him to submit his resignation letter and since he did not accept the same, the management planned to punish him by transferring him to distant places like Chennai, Villivakkam etc., and finally unable to withstand the rigours of the managerial pressure, he submitted his resignation letter to them, but the respondent was not prepared to pay the *lump sum* amount as originally offered by them.

7. In order to prove his claim, the petitioner examined himself as P.W.1, who deposed about the said facts and marked Ex.P1 to Ex.P10. Ex.P1 is the resignation letter

submitted by the petitioner to the respondent. Ex.P2 is the letter submitted by the petitioner to the respondent regarding settlement of accounts. Ex.P3 is the representation submitted by the petitioner to the Labour Officer. Ex.P4 is the reply submitted by the respondent to the Labour Officer. Ex.P5 is the failure report, dated 7-4-2008. Ex.P6 is the reply, dated 11-12-2006 submitted by the respondent to the Labour Officer. Ex.P7 is the representation dated 10-6-2006 sent by Alwin Maria Susai to the respondent. Ex.P8 is the pamphlet showing the inaugural function of the trade union. Ex.P9 is the pay slip of the petitioner for the month of October 2004. Ex.P10 is the service certificate issued by the respondent to the petitioner. The learned counsel for the petitioner relied upon the following decisions to support his claim:-

CDJ 2000 SC 199:

“The appellant was a casual labour who had attained the temporary status after having put in ten years of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meager amount of ₹ 6,350 was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental rights under the constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of fundamental rights available under the constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.”

CDJ 2003 SC 820:-

“Medical Ethics - Hospital service rules - Rule 10(1) - Negligence - Appellant anaesthetist left without informing when requested to give anaesthesia to one patient admitted in emergency - No explanation submitted by her - Placed under suspension - Appellant replied to Secretary to Hospital that she was sick and very tired and if it is not acceptable she has no option left but to render her resignation with immediate effect - Resignation accepted - High Court declined to interfere dismissed writ petition - Appeal - Whether the letter, dated 9-1-1999 could be construed to mean or amounted to a letter of resignation or merely an expression of her intention to resign, if her claims in respect of the alleged lapse are not viewed favourably - Held the letter cannot be construed to convey and spontaneous intention

to give up or relinquish her office accompanied by any act of relinquishment. To constitute a 'resignation' it must be unconditional and with an intention to operate as such. At best, as observed by this court in the decision in P.K. Ramachandra Iyer (*supra*) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple - Order of High Court set aside - Appeals allowed with liberty to respondent hospital to pursue the disciplinary proceedings initiated against her in accordance with law.

8. *Per contra*, the contention of the respondent is that the respondent company intended to transfer the drivers including the petitioner, for better utilisation of their services and on administrative reasons and exigencies of work and having come to know of the transfer which is an incident of service, the petitioner along with other drivers, who have worked at one station throughout their service career, made a representation to the then General Manager-HRD that they were totally fed up with the monotonous work which they were doing in the factory for quite a long time and their dream was to own a vehicle and use it for commercial purpose which would fetch them more income and the management keeping in view of their long association with the management, considered the representation as *bona fide* and gave clearance to Michael Raj to negotiate with the drivers to arrive at a reasonable *ex gratia* payment without laying any precondition and accordingly he proceeded with the negotiation and after negotiation, the petitioner and other drivers have agreed for the *lump sum ex gratia* payment negotiated by the management taking into consideration of their respective period of service and the petitioner tendered his resignation voluntarily *vide* letter, dated 4-6-2005 and the resignation was accepted by the management and the petitioner has also received his legal dues and the *ex gratia* of ₹ 93,301 *vide* receipt of the same date and the management has also issued a service certificate to him and on account of his resignation, he has also applied for gratuity in Form-1 and received the gratuity amount and subsequently, he has also settled for gratuity in Form-1 and received the gratuity amount and subsequently, he has also settled his provident fund account and the petitioner having tendered resignation voluntarily and after having accepted terminal benefits and *ex gratia* payment without any protest and after having settled his provident fund account cannot now turn round and allege that the resignation was obtained by coercion and undue influence.

9. In order to prove his defence, the General Manager-HR of the respondent company was examined as R.W.1. R.W.1 in his evidence has deposed about the said facts and marked Ex.R1 to Ex.R16.

10. Heard both sides. Perused the case records. It is admitted by both parties that the petitioner was working as driver from 16-4-1990 to 4-6-2005 in the respondent company. It is also admitted by both parties that the petitioner has tendered his resignation to the respondent company. But the learned counsel for the petitioner has submitted that relieving the petitioner from service was due to coercion and he was threatened, forced in doing so and it was contrary to law. In the proof affidavit, the petitioner as P.W.1 has stated that on 4-6-2005 when he reported for work at 8.00 a.m. he was not allowed to go inside the company and at about 9.00 a.m. he and other drivers were called inside and R. Sundararajan, Personnel Manager threatened them stating that it was the last chance for them to get the compensation indicated by the respondent and since he refused to accept the same, the management planned to punish them by transferring them to distance places like Chennai and he was transferred to Head Office, Vandalur, Chennai and as per the instruction of the said Sundararajan, he met him on 5-6-2005 by 10.00 a.m. who advised him to accept a sum of ₹ 5 lakhs offered by the respondent company and submit resignation letter at once and left with no other alternative, he decided to submit a resignation letter. P.W.1 further stated that R. Sundararajan took him to the room of one R. Michaelraj and the officers of the respondent company S. Rajaram and V.R. Raghuraman came there and R. Sundararajan dictated the resignation letter, which was written by his co-employee T. Pannerselvam and he signed and then gave it to G.M.-HRD. PW1 further deposed that the said Raghuraman asked him to sign many stamped/unstamped blank papers and when he refused to do so, the said Raghuraman told him that unless the union board is removed, the compensation amount promised will not be given and after one hour, he was given a cheque for ₹ 87,455 towards full and final settlement and as the resignation letter submitted by him was not voluntary one but obtained by the respondent under coercion and undue influence, it was not legally valid and binding on him.

11. In order to prove that the resignation letter was obtained by coercion, the petitioner has examined one Sundararajan as P.W.2. P.W.2 in his evidence has deposed that he knows the petitioner and after getting resignation letter from the petitioner, he was terminated by the respondent company and as directed by his superior officer by name Michael Raj, the resignation letters were obtained from the petitioner and other drivers, since they were prepared to start a trade union. P.W.2 further deposed that the petitioner himself wrote

the resignation letter, as dictated by the respondent company. P.W.2 further deposed that since the petitioner has not compromised with the management of the respondent and participated in starting the Trade Union, he has forced to give the resignation letter. During the cross-examination, P.W.2 has admitted that on 31-3-2010 he was forced to resign the job from the respondent company and the respondent company has not given retirement benefit amount as promised by them.

12. The learned counsel for the respondent has submitted that the petitioner was not the 'workman' within the meaning of 2(s) of Industrial Disputes Act and having given a voluntarily resignation, no dispute can be raised under section 2-A of the Industrial Disputes Act and the said provision is available only in the case of termination by the management and not in case of voluntary resignation by the petitioner. The learned counsel for the respondent further submitted that when the petitioner has voluntarily tendered his resignation and accepted the same by the management and all the benefits arising out of such resignation has been paid by the management and received by the petitioner, he cannot be treated as a 'workman' coming under section 2(s) of Industrial Disputes Act. In order to support his claim, he relied upon the following decisions:-

(1999) II LLJ 851 Ker:

"The appellant, having voluntarily tendered his resignation pursuant to a scheme for voluntary retirement, the resignation having been accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the appellant, he cannot be treated as a 'workman' coming under section 2(s) of Industrial Disputes Act. As already noticed, the definition only includes persons who are presently employed, or who have been dismissed, discharged or retrenched from the service of the employer".

(2001) II LLJ 52 Ker:-

"The absence of the terms 'resignation' and retirement in the aforesaid definition, according to me is very conspicuous. When a person claims the status of a 'workman' under the deeming provisions, he has to establish that he comes within the four corners of the definition provided therefor under the statute".

Writ Petition No. 1488 of 2001:

"The resignation by the petitioner brings about complete cessation of master and servant relationship between the third respondent and the petitioner. Hence, the petitioner cannot at all be termed as "workman" within the meaning of section 2(s) of the Act".

2011 LLR 486:-

"In view of the above finding that the workmen are not workmen within the meaning of 2(2) of the Industrial Disputes Act and the case of the workmen that it was a fraud resignation was not believed, they are not eligible to move the Labour Court under section 2-A of the Industrial Disputes Act".

AIR 1990 SC 1808:-

"The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation, it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (I) of section 2(s) of State Act."

2008 LLR 86:-

"Resignation by an employee - Withdrawal of - After valid acceptance not permissible - Petitioner tendered her resignation on 20-3-2006 to be effective from 1-4-2006 - Her account was settled and a cheque for ₹ 7,05,092 was given in full and final - In the last week of June 2006, the company introduced a severance package for employees who will be resigning - Petitioner sent a letter, dated 18-8-2006 stating that she has tendered the resignation under threat and coercion - Is devoid of justification - Resignation was voluntary and not under coercion".

13. On the side of the respondent, the resignation letter given by the petitioner was marked as Ex.R1. In Ex.R1, the petitioner has stated that on his own request, he tendered his resignation and hence he requested the respondent management to give the gratuity, *ex gratia*, provident fund and other benefits. Based on Ex.R1, the petitioner was relieved from service by the respondent management. Ex.R1 has not been challenged by the petitioner. In fact, the petitioner himself has admitted in his cross-examination that he only wrote Ex.R1 and gave it to the respondent management. The relevant portion of his evidence runs as follows:-

"எக்சிபிட் பி 1 ராஜினாமா கடிதம் எனது கைப்பட எழுதி தரப்பட்டது என்றால் சரிதான். அந்த ராஜினாமா கடிதத்தை ஏற்றுக் கொண்டு பணியிலிருந்து விடுவித்துள்ளது".

Ex.R2 is the letter, dated 4-6-2005 sent by the respondent management to the petitioner. A perusal of Ex.R2 reveals that the respondent management has accepted the resignation tendered by the petitioner. Ex.R3 is the receipt issued by the petitioner in favour of the respondent company, which would prove that the petitioner has received a sum of ₹ 1,09,424 towards full

and final settlement by way of two cheques on the same date of resignation *i.e.* 4-6-2005. Ex.R5 is the application for gratuity, dated 4-6-2005 which has been given by the petitioner to the respondent company. The said documents clearly prove that based upon the resignation letter given by the petitioner, he was relieved from service by the respondent company and subsequently he received a sum of ₹ 1,09,424 towards full and final settlement.

14. The learned counsel for the petitioner has submitted that the resignation letter has been obtained by the respondent company from the petitioner by force and coercion and PW.2 has clearly spoken about the said fact and hence the termination of the services of the petitioner by adopting unfair means is arbitrary, illegal and void and not binding on the petitioner.

15. It is true that PW.2, who is an ex-employee of the respondent company, has stated that the resignation letter has been obtained from the petitioner by force as directed by his superior officer. According to PW.2, he along with one Rajaraman went to the house of Lourdasamy, Panneerselvam and Sivakumar for compromise to get the resignation letter from them. The said Rajaraman was examined on the side of the respondent as RW.3. RW.3 in his evidence has deposed that he was working as Assistant Manager in the respondent company from 1997 and he did not involve in the labour matters and with regard to the resignation of drivers, he did not meet any person and get the letter from them. This part of evidence of RW.3 is contrary to the statement of PW.2. Further one Raguraman, General Manager of the respondent company was examined as RW.2. RW.2 in his evidence has deposed that the petitioner and the other drivers have voluntarily tendered their resignation and they were not forced to get the same in any manner. RW.2 in his evidence has further deposed that one Sundararajan (PW.2) was working as an officer in the respondent company and now he is not in service and at no point of time, he along with one Michael Raj made a talk with the drivers. Of course RW.2 and RW.3 are the employees in the respondent company and they might have deposed in favour of the respondent company. But at the same time, the evidence of PW.2 can be looked into. PW.2 in his cross-examination, has stated that he joined as Assistant in the respondent company during the year 1985 and then he was promoted to Administrative Officer, Special Officer, Senior Special Officer and Assistant Manager and then on 31-3-2010 he was forced to resign from the job and he did not come forward to give the resignation letter voluntarily and the management did not pay the amount (நடுவெண்ணத் தொகை) as promised by them and he sent the e-mail letter under Ex.R14 to the respondent

company, requesting for financial help and one Murali, who was the Assistant Manager has sent a reply under Ex.R15.

16. This part of evidence of PW.2 would clearly show that due to misunderstanding between PW.2 and the respondent company, he was relieved from service by the respondent company. Under these circumstances, there is every possibility for PW.2 to depose falsehood as against the respondent company. Apart from the above, the petitioner has stated that the respondent was not prepared to pay the *lump sum* amount as originally offered by the respondent. Admittedly, the petitioner was paid a sum of ₹ 1,09,424 towards full and final settlement on 4-6-2005 under Ex.R3. But the petitioner has raised a dispute only on 23-11-2006 after 1½ years from the date of receipt of the said amount. If there is any variation in getting the terminal benefits, it is for the petitioner to approach before the respondent company immediately on receipt of the said amount. But there is no document produced on the side of the petitioner to show that he approached the respondent company for not granting the terminal benefits, as promised by the respondent company. Further there is no plausible explanation on the side of the petitioner for delay in raising the present dispute. In the above circumstances, the case of the petitioner that it was a fraud resignation cannot be believed.

17. It is pertinent to refer the following decisions, which are relevant to this case:-

2003(1) L.L.N. 84:

Laffans India (Private) Limited, Versus Pancham Singh Rawat and Another:-

“Industrial Disputes Act, 1947 Section 10(1)(c) - Complaint of forced resignation - Tenability - Labour Court awarded compensation *in lieu of* reinstatement on ground that employer had resorted to short-cut of taking resignation and thus avoided payment of retrenchment compensation - Dispute raised after a period of 15 months - Held delay of 15 months was a crucial factor to discard totally the theory that the workman was forced to resign as no workman who was forced to resign would keep quiet for such a long period - Held, award of Labour Court was perverse and totally baseless”.

2005(2) L.L.N. 360:-

K. Haridas L. Shenoy and Johnson and Johnson Limited and Others:-

“Resignation - Case of workman is that it was obtained under coercion - If could be believed - Held, workman not making immediate protest that his resignation was obtained by force - Protest made after 20 days from date of resignation - Concurrent finding of fact that there was no coercion - No interference with the concurrence findings of courts below”.

18. The petitioner has further stated that since he refused to give the resignation letter, as demanded by the respondent management, the respondent management planned to punish the petitioner by transferring him to distant places like Chennai.

19. PW.1 in his cross-examination has admitted that the transfer of employees in the respondent company is routine one and the respondent company has informed anything about his transfer to other place and from 1994 onwards he was working in the same place. The relevant portion of his evidence runs as follows:-

“பணி இடமாற்றம் என்பது எங்கள் பணியில் ஒரு சாதாரண நிகழ்வுதான் என்றால் சரிதான். பணி இடமாற்றம் செய்யப் போவதாக நிர்வாகம் எதுவும் சொல்லவில்லை. 1994-ல் இருந்து பணியில் சேர்ந்தது முதல் ஒரே பகுதியில் தான் பணி புரிந்தேன்”.

Though the petitioner has stated that the respondent company has planned to transfer him to distant place, during the cross-examination, he has stated that he was not informed anything about his transfer. Further transfer of employees from one place to another place is the discretion of the management and no one can interfere with this. Hence, the contention of the petitioner that by threatening him to transfer to distant place, the respondent management got his resignation letter, cannot be taken into consideration.

20. For the foregoing reasons, this court has come to the conclusion that the petitioner has tendered his resignation voluntarily and based on which, he was relieved from service and consequently the terminal benefits were given to him, which were accepted by him without any objection and hence the petitioner is not workman within the meaning of section 2(s) of Industrial Disputes Act and he is not entitled to get the reinstatement with back wages and other benefits. Accordingly, this point is answered.

21. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 19th day of July 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

PW.1 — 17-3-2011 A. Lourdasamy
PW.2 — 8-7-2011 Sundararajan

List of witnesses examined for the respondent:

RW.1 — 19-9-2011 Daniel Rajanayagam
RW.2 — 27-3-2012 V.R. Raguraman
RW.3 — 10-4-2012 Rajaram

List of exhibits marked for the petitioner:

Ex.P1 — Resignation letter, dated 4-6-2005 submitted by the petitioner to the respondent.
Ex.P2 — Letter, dated 4-6-2005 submitted by the petitioner regarding settlement of accounts.
Ex.P3 — Representation, dated 20-10-2006 submitted by the petitioner to the Labour Officer.
Ex.P4 — Reply, dated 25-12-2006 submitted by the respondent to Labour Officer.
Ex.P5 — Failure report, dated 7-4-2008
Ex.P6 — Reply, dated 11-12-2006 submitted by the respondent to Labour Officer.
Ex.P7 — Letter, dated 10-6-2005 by Alwin Maria Susai to respondent.
Ex.P8 — Pamphlet showing inaugural function of trade union.
Ex.P9 — Pay slip of the petitioner for the month of February 2005.
Ex.P10 — Service certificate issued by the respondent to the petitioner.

List of exhibits marked for the respondent:

Ex.R1 — Resignation letter submitted by the petitioner, dated 4-6-2005.
Ex.R2 — Letter, dated 4-6-2005 issued by the respondent relieving the petitioner.
Ex.R3 — Receipt towards full and final settlement, dated 4-6-2005.
Ex.R4 — Service certificate of the petitioner, dated 4-6-2005.
Ex.R5 — Application for gratuity submitted by the petitioner, dated 4-6-2005.
Ex.R6 — Letter, dated 20-10-2006 submitted to the Labour Officer by petitioner.
Ex.R7 — Remarks submitted by the respondent, dated 25-12-2006.
Ex.R8 — Conciliation failure report, dated 17-4-2008
Ex.R9 — Copy of the letter sent by the Member-Secretary to the respondent, dated 30-6-2006.
Ex.R10 — Copy of the letter sent by Member Secretary to the respondent, dated 11-7-2006.
Ex.R11 — Copy of the Advocate notice sent to the petitioner dated 18-7-2006.

- Ex.R12 — Copy of the private complaint filed by the respondent against the petitioner, dated 13-9-2006.
- Ex.R13 — Copy of the plaint in O.S. No. 173/2006 on the file P.S.J. Pondicherry.
- Ex.R14 — E-mail, dated 4-2-2011 sent by the petitioner
- Ex.R15 — E-mail, dated 5-12-2009 sent by Murali to the petitioner.
- Ex.R16 — E-Mail, dated 10-2-2010 sent by Murali to the petitioner.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 3818/CEO/KKL/E3/(Exam.)/2012.

Karaikal, the 12th November 2012.

NOTIFICATION – I

It is hereby notified that the original H.S.C. Mark Certificate under Register Number 465645, bearing Serial No. HSG 2931169 of March 2007 session in respect of K. Datchanamoorthy, an ex-pupil of Jawaharlal Nehru Government Higher Secondary School, Nedungadu, Karaikal is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Secretary, Board of Secondary Examinations, College Road, Chennai-6 for cancellation, as it is no longer valid.

G. SUBRAMANIAN,
Chief Educational Officer.

NOTIFICATION – II

It is hereby notified that the original H.S.C. Mark Certificate under Register Number 696140, bearing Serial No. AB 2508034 of March 1998 session in respect of K. Cleophas Karpaga Marie, an ex-pupil of Nirmala Ranee (Girls') Higher Secondary School, Karaikal is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Secretary, Board of Secondary Examinations, College Road, Chennai-6 for cancellation, as it is no longer valid.

G. SUBRAMANIAN,
Chief Educational Officer.

NOTIFICATION – III

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 479460, bearing Serial No. SEC 2441576 of March 2005 session in respect of K. Datchanamoorthy, an ex-pupil of Don Bosco High School, Nedungadu, Karaikal is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

G. SUBRAMANIAN,
Chief Educational Officer.

NOTIFICATION – IV

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 467657, bearing Serial No. SEC 1420011 of April 2004 session in respect of J. Niranjana, an ex-pupil of Nirmala Ranee (Girls') Higher Secondary School, Karaikal is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

G. SUBRAMANIAN,
Chief Educational Officer.

NOTIFICATION – V

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 319784, bearing Serial No. AA 3165400 of March 1995 session in respect of M. Kamalini, an ex-pupil of Nirmala Ranee (Girls') Higher Secondary School, Karaikal is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

G. SUBRAMANIAN,
Chief Educational Officer.

NOTIFICATION – VI

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 467163, bearing Serial No. SEC 1417751 of April 2004 session in respect of B. Sundaramani, an ex-pupil of Thanthai Periyar